

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 4, 2014 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment. She explained that since May 2013 she felt overwhelmed because she was required to move from route to route, but she needed more stability. Appellant stopped work on August 20, 2013 and returned to work on June 10, 2014. The employing establishment indicated that she had restrictions which limited her workweek to 30 hours and that she carried a T-6 swing route.³

In a February 18, 2014 letter, B.M., a Health and Resource Management Specialist, noted that appellant was off work from October 14, 2004 through April 1, 2006, during which time she received compensation benefits under OWCP File No. xxxxxx361.⁴ She indicated that on December 9, 2004 appellant had submitted a voluntary request to transfer to another post office and that she was informed that, if approved, employing establishment regulations required that “employees requesting transfer become part-time employees.” B.M. noted that appellant had several previous transfers to different post offices, in which she was trained on new routes and received training on the use of the postal scanner and all other requirements for her position. All of appellant’s transfers were voluntary and that she was made a part-time employee and had to learn new routes. B.M. indicated that on June 15, 2007 appellant had voluntarily transferred to the employing establishment (Altamonte Spring, FL), which required driving a postal vehicle and taking a driving test which she initially failed. She noted that on August 20, 2013 the employing establishment had conducted an investigative interview with appellant and explained that all employees who do not scan packages appropriately undergo an investigative interview to determine the reason for the error.

In a February 20, 2014 letter, K.L., appellant’s supervisor, denied that appellant needed to be trained on computers because she only used a scanner. The supervisor noted that appellant had been scanning packages for years, and had scanned hundreds, if not thousands, of packages. The supervisor indicated that appellant’s failure to scan a package had nothing to do with how to use the “computer.” K.L. noted that, during the “August 20, 2014” investigative interview,⁵ appellant indicated that she could have double checked the scanner. The supervisor also indicated that per

³ The accompanying job description indicates, in part, that appellant is a “carrier technician” who is the principal carrier for a minimum of five letter routes during the absences of the regularly assigned carrier.

⁴ Under OWCP File No. xxxxxx361, it accepted that a May 5, 2004 employment incident resulted in anxiety, major depressive disorder single episode, and post-traumatic stress disorder (PTSD). By decision dated April 24, 2014, it denied appellant’s recurrence claim on and after August 21, 2013. OWCP specifically found that her involvement in an investigative interview on August 20, 2013 was a new work factor/intervening cause, for which she could file a new claim for work injury.

⁵ The Board notes that “August 20, 2014” appears to be a typographical error as the record indicates that the investigative interview took place on August 20, 2013.

the contractual requirement, all carriers become part-time flexible (PTF) employees when they transfer, regardless of years of service.

In a June 9, 2014 memorandum, V.J., the officer in charge, indicated that appellant was a PTF carrier, which was a flexible position wherein the carrier moved from route to route. She indicated that on August 20, 2013 appellant underwent an investigative interview for failure to scan a priority tracking number. V.J. noted that appellant had called in sick on August 21, 2013 and had not returned to work.

In a March 13, 2014 report, Dr. Vickki-Ann Samuel, a psychiatrist, noted that appellant had symptoms of depression, anxiety, and PTSD since 2004 following an incident at work and that she had been transferred to several stations as a result of that employment incident. In August 2013, during an incident at work, appellant became enraged due to all her stressors from work and had been unable to return to work since that incident due to ongoing symptoms of depression and anxiety.

In a June 24, 2014 development letter, OWCP requested that appellant provide additional factual and medical evidence in support of her alleged occupational disease. It also requested that she complete a factual questionnaire. Appellant was afforded 30 days to respond. No further evidence was received.

By decision dated December 12, 2014, OWCP denied appellant's occupational disease claim finding that the factual component of fact of injury had not been established. It found that she had not provided a factual statement and that the medical evidence of record did not provide specific details regarding a particular work event that occurred on August 21, 2013.

On February 3, 2015 appellant, through her representative, requested reconsideration.

In a January 20, 2015 report, Dr. Ramon O. Martinez, a Board-certified psychiatrist, indicated that appellant had been a patient since March 24, 2014. He opined that she had PTSD and unspecified episodic mood disorder and, as of January 19, 2015, was totally disabled.

On December 30, 2016 OWCP received another letter from appellant's representative, requesting reconsideration.

By decision dated April 3, 2017, OWCP denied modification of the December 12, 2014 decision finding that none of the evidence submitted provided an account or was evidence of the employment factors alleged to have caused appellant's emotional condition.

On April 22, 2017 appellant, through her representative, requested reconsideration. In an April 22, 2017 letter, appellant's representative indicated that she had a prior accepted emotional condition claim for a May 5, 2004 incident⁶ and that her condition was aggravated by the August 20, 2013 employment incident. The representative noted that the incident involved

⁶ See *supra* note 4.

appellant's inability to perform her assigned duties, which resulted in a disciplinary interview on August 20, 2013.

In an April 18, 2017 statement, appellant indicated that on August 20, 2013 the shop steward informed her that she was required to attend an investigative interview. She began feeling anxious and had an overwhelming feeling that something bad was going to happen. Appellant noted that she became instantly depressed when her supervisor told her that she had not scanned two packages the previous day. She further indicated that she had an uncontrollable outburst wherein she yelled wanting to know why she was not made full time. Appellant alleged that, as a PTF employee, practically every day she had a different route, worked in different areas, worked in a different vehicle, and that nothing was stable. She also alleged that it was difficult for her to perform at this level, which she had once performed with ease.

OWCP received an April 17, 2017 letter from a licensed clinical social worker, along with October 3 and December 30, 2013 notes from Dr. Benjamin F. Isome, a clinical psychologist, and a March 31, 2014 note from Dr. Samuel extending appellant's medical leave of absence. In her March 31, 2014 note, Dr. Samuel noted that appellant had an emotional incident at work in August 2013, in which appellant became enraged and had difficulty controlling her emotions, which resulted in a decompensation of her mental illness.

In a January 9, 2014 report, Dr. Isome reported that appellant had been a patient since October 14, 2004 due to an employment-related incident. He reported that, after a period of unemployment from October 14, 2004 through February 1, 2006, she was transferred to a different post office on April 1, 2006 as a part-time letter carrier. Dr. Isome reported that appellant had several transfers thereafter, noting that she transferred to the current post office in 2010 as a PTF employee. He noted that she was instructed to take a driving test, despite having driven postal vehicles for approximately 20 years. However, due to her elevated stress levels and depressive symptoms, appellant failed the driving test and was out of work for one month, when she was declared fit for duty, but not at that location. Dr. Isome indicated that her new transfer and changing her routes shortly after learning the new routes manifested into intense anxiety that inhibited her ability to concentrate, sleep at night, low energy, and complete loss of confidence. He noted that appellant became financially destitute while she was off work. Appellant also became further depressed because of her inability to pass the driving test and not being trained on the computers at work. She returned to work on August 19, 2013 and on August 20, 2013, was told to go into the office with a shop steward for a formal discussion that she had failed to scan two packages and failed to follow instructions on the computer system. Dr. Isome indicated that, when appellant began to listen and answer questions, she experienced an emotional outburst that she was unable to control and had been emotionally distraught since the incident. He diagnosed major depression and PTSD with chronic and delayed onset. Dr. Isome indicated that appellant was placed on medical leave on August 21, 2013 and opined that she continued to be mentally disabled.

By decision dated June 13, 2017, OWCP modified the April 3, 2017 decision finding that the factual component of fact of injury was established. It accepted that on August 20, 2013 she attended an investigative interview regarding her work performance pertaining to the scanning of packages. OWCP also accepted that appellant was working under a part-time schedule and, in the August 20, 2013 meeting, she inquired as to why she had not been made full time. It did not accept

that her work as a PTF employee involved daily changes. However, it denied the claim for an emotional condition as appellant had not established compensable factors of employment.

On December 15, 2017 appellant, through her representative, requested reconsideration. It also received a summary of her daily assignments for the period January 29, 2011 through August 20, 2013, which noted numerical and letter codes as well as leave, and a December 27, 2017 statement from the employing establishment.

In a December 15, 2017 statement, appellant's representative alleged that her emotional reaction had been based on her inability to perform her assigned duties on the multiple assignments she was required to perform and that there had been changes to carrier duties including the use of computers/scanners which caused appellant to be admonished for missing scans on several mail parcels. She indicated that the eight pages of daily assignment worksheets from January 29, 2011 through August 20, 2013, which were prepared from appellant's clock rings, supported that she was given up to five different assignments on a single day leading up to the August 20, 2013 investigative interview.

By decision dated February 22, 2018, OWCP denied modification of its June 13, 2017 decision, finding that appellant had not established a compensable factor of employment.

On March 9, 2018 appellant, through her representative, requested reconsideration. Evidence received in support of the reconsideration request included numerous pages of processed clock rings from reports for the period from April 1, 2011 through January 15, 2014 and her training course record from 1988 through 2014.

By decision dated May 8, 2018, OWCP denied modification of its February 22, 2018 decision.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁹ There are situations where an injury or illness has some

⁷ *R.L.*, Docket No. 17-0883 (issued May 21, 2018).

⁸ 28 ECAB 125 (1976).

⁹ *Supra* note 2.

connection with the employment, but nevertheless does not come within coverage under FECA.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹ In contrast, a disabling condition resulting from an employee's feelings of job insecurity is insufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment, or to hold a particular position.¹²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹³ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁴ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

Appellant has attributed her emotional condition in part to *Cutler*¹⁶ factors. She alleged that her work as a PTF carrier involved daily route changes and that she was assigned many different routes per day. Appellant also alleged that she was not trained on the new computers or with the new scanners. Pursuant to *Cutler*¹⁷ these allegations could constitute compensable employment factors if she established that her regular job duties or a special assignment caused an emotional condition. The Board finds, however, that, the record indicates that she chose to transfer

¹⁰ See *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

¹¹ *Supra* note 7.

¹² *Id.*

¹³ See *C.V.*, *supra* note 10; *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ See *C.V.*, *supra* note 10; *Kim Nguyen*, 53 ECAB 127 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁵ See *C.V.*, *supra* note 10; *Roger Williams*, 52 ECAB 468 (2001).

¹⁶ *Supra* note 8.

¹⁷ *Supra* note 8.

into a PTF position, which could encompass a minimum of five routes depending on the day's assignment. While she asserted that she needed more stability in her work assignments, the Board has held that issues of work scheduling pertain to an appellant's desire to work in a particular environment and do not constitute compensable factors of employment.¹⁸ Thus appellant has not established a compensable factor in this regard.

Regarding appellant's general allegation that she developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under FECA.¹⁹

Appellant also submitted no evidence to support that she was not provided with adequate tools to perform her job. The employing establishment denied that appellant needed to be trained on computers, noting that only a scanner was applicable in her position. While there is no evidence of a training course for scanners, the employing establishment indicated that she was trained on the new scanners and had scanned hundreds, if not thousands, of packages in the course of her tenure as a letter carrier. It also noted that appellant's failure to scan a package had nothing to do with how to use the scanner and that, during the August 20, 2013 investigation, she did not indicate that she did not know how to use the scanner. Without evidence substantiating that appellant was not provided with adequate tools to perform her job, she has failed to meet her burden of proof to establish a compensable factor of employment under *Cutler*.²⁰

Appellant made several allegations related to administrative and personnel matters. On August 20, 2013 she attended an investigative interview regarding her work performance pertaining to the scanning of packages. The Board has held that an investigation itself is not a compensable factor under FECA, but rather is an administrative function. As an investigation is generally related to the performance of an administrative function of the employing establishment and not to the employee's regular or specially assigned work duties, it is not a compensable factor of employment unless there is affirmative evidence that the employing establishment erred or acted abusively in the matter.²¹ The employing establishment explained the reasons for its actions in this administrative matter.²² In her February 18, 2014 letter, B.M. indicated that all employees who do not scan packages appropriately have an investigative interview to determine the reason for the error. Appellant did not provide independent or probative evidence to establish that the employing establishment erred or acted abusively in this matter. Thus, this does not constitute a compensable employment factor.

Appellant also alleged that the employing establishment assigned her to part time status and, in the August 20, 2013 meeting, she inquired as to why she had not been made full time.

¹⁸ *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

¹⁹ See *D.F.*, Docket No. 17-1324 (issued April 24, 2018); *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

²⁰ *Id.*

²¹ See *supra* note 7; *Larry J. Thomas*, 44 ECAB 291 (1992).

²² See *supra* note 7.

However, the record reflects that she voluntarily transferred into her position which was part time in nature. B.M. clearly noted in her February 18, 2014 letter that employing establishment regulations require that employees requesting transfer become part-time employees, regardless of their years of service. Thus, there is insufficient evidence to establish a compensable employment factor in this regard.

Consequently, appellant has not met her burden of proof to establish her claim for an emotional condition as she had not attributed her claimed condition to a compensable employment factor.²³

On appeal, appellant's representative reiterates contentions raised before OWCP. As explained above, the Board finds that appellant has not established an emotional condition in the performance of duty.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

²³ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see F.M.*, Docket No. 16-1504 (issued June 26, 2017); *A.K.*, 58 ECAB 119 (2006); *Katherine A. Berg*, 54 ECAB 262 (2002); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board